IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION: May 01, 2007

Parties Name

Dr. Kamal Singh and another

..PETITIONERS

VERSUS

State of Haryana and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MRS. JUSTICE NIRMAL YADAV

PRESENT: Mr. D.S. Patwalia,
Advocate, for the petitioners.

Mr. Rameshwar Malik, Addl. A.G., Haryana;

Mr. R.K. Malik, Advocate, for respondents No. 5 & 6.

Mr. R.S.Tacoria, Advocate;

JASBIR SINGH, J.

Order.

By filing this writ petition, petitioners claimed that they be given benefit of reservation police as envisaged in document Annexure P-6. It is their further prayer that a writ of certiorari be issued to quash Annexure- C of the prospectus Annexure P-5, issued by respondent No. 2 to get admission in M.D./M.S./P.G. Diploma and MDS Courses (in short the Courses) for the academic session 2007-08, as in the prospectus, no reservation has been envisaged, which is contrary to the Notification Annexure P-6 and also guidelines, issued by University Grants Commission and law laid down by the Hon'ble Supreme Court of India.

Records reveal that for the purpose of admission to the Courses, respondent No. 2 has been authorized to conduct the entrance examination, declare result etc.. Consequent thereto, respondent No. 2 issued prospectus Annexure P-5 stating necessary qualifications to appear in the entrance test, total number of seats, scheduled date for the test, counselling etc. It has further been shown as to how many seats will fall in All India quota, HCMS reserved quota and open merit. In that prospectus, it is not mentioned that any seat is reserved for members of the Scheduled castes.

It is an admitted fact that as per the Schedule, fixed by respondent No. 2, the petitioners had applied to appear in the entrance test . They filled up their admission forms as general category candidates and did not claim any benefit of the reservation policy. They thereafter appeared in the Test, result of which was declared on March 12, 2007. As per merit list, they figured at Serial No. 100 and 90 respectively. It is thereafter that they have filed the present writ petition.

Before this Court, to claim benefit of reservation policy, primary reliance of counsel for the petitioners is upon notification Annexure P-6 dated March 19, 1999, wherein it is mentioned that in educational/professional/medical/dental institutions/Colleges etc., the Government had decided to provide reservation, in favour of Scheduled castes, to the extent of 20%. Reliance to claim benefit of reservation has also been placed upon the prospectus, issued by All India Institute of Medical Sciences, New Delhi, and another prospectus, issued by respondent No. 2, for admission in MBBS/BDS/BAMS/BHMS courses, wherein seats have been reserved for members of the Scheduled castes.

Shri D.S.Patwalia, counsel for the petitioners, has vehemently contended that Annexure -C, attached with the prospectus Annexure P-5, runs contrary to the stipulation made in Notification Annexure P-6 and as such it is liable to be rectified. Counsel further states that reservation is available to the members of the Scheduled castes, in medical profession, at the level of graduation but the authorities have wrongly denied that benefit to the petitioners to get admission in the Courses. He prayed that necessary directions be issued to the respondents to give benefit of reservation to the petitioners, as per guidelines, laid down in Notification Annexure P-6.

Upon notice, replies have been filed by the respondents. In their reply, respondents No. 1 and 2 have categorically stated that at this stage, it is not open to the petitioners to lay challenge to the prospectus, under which they have applied, as general category candidates, to get admission in the Courses, as after declaration of result of the entrance test, they are estopped to impugn the provisions of the prospectus Annexure P5. It is further stated that in view of policy of the State Government, as depicted in documents Annexure R-1 dated April 5, 1988, Annexure R-2 dated January 1, 1991, Annexure R-3 dated April 26, 2002, the respondents have decided not to give benefit of reservation, to the members of the Scheduled castes, at the level of Postgraduate and super-speciality courses in medical profession. It is also stated that as the petitioners have not laid any challenge to the documents, referred to above, no benefit of reservation can be provided in their favour. At the time of arguments, by reiterating their stand, taken in the written-statement, it was prayed that the writ petition be dismissed.

After hearing counsel for the parties, this Court is of the view

that this writ petition deserves to be dismissed. After issuance of prospectus Annexure P5, for admission to the Courses, the petitioners applied as general category candidates, without claiming any benefit of the reservation policy. They appeared in the entrance test and after declaration of the result, when they felt that they have no chances to get admission, they filed this writ petition. In view of their conduct, this Court is of the opinion that at this stage, they are estopped to claim any benefit of the reservation policy.

Furthermore, at the level of super-speciality courses and post-graduate course, reservation of seats for any category of candidates did not find favour even with the Hon'ble Supreme Court. In Dr. Preeti Srivastava and another v. The State of Madhya Pradesh and others, 1999(4) S.L.R. 687, where the Hon'ble Supreme Court was dealing with, fixing of separate criteria, to full up the reserved seats, in medical courses,has observed thus:

> "This Court has repeatedly said that at the level of super-specialisation there cannot be any reservation because any dilution of merit at this level would adversely affect the national goal of having the best possible people at the highest levels of professional and education training. At the level of a super-speciality, something more than a mere professional competence as a doctor is required. A super-specialist acquires expert knowledge in his speciality and is expected to possess exceptional competence and skill in his chosen field, where he may even make an original contribution in the form of new innovative techniques or new knowledge to fight diseases. It is in public interest that we promote these skills. Such high

degrees of skill and expert knowledge in highly specialised areas, however, cannot be acquired by anyone or everyone. For example, specialised sophisticated knowledge and skill and ability to make right choices of treatment in critical medical conditions and even ability to innovate and device new lines of treatment in critical situations, requires high levels of intelligent understanding of medical knowledge or skill and a high ability to learn from technical literature and from experience. These high abilities are also required for absorbing highly specialised knowledge which is being imparted at this level. It is for this reason that it would be detrimental to the national interest to have reservations at this stage. Opportunities for such training are few and it is in the national interest that these are made available to those who can profit from them the most viz. the best brains in the country, irrespective of the class to which they belong.

26.At the next below stage of post-graudate education in medical specialities, similar considerations also prevail though perhaps to a slightly lesser extent than in the super-specialities. But the element of public interest in having most meritorious students at this level of education is present even at the stage of post-graduate teaching. Those who have specialised medical knowledge in their chosen branch are able to treat better and more effectively, patients who are sent to them for expert diagnosis and treatment in their specialised field. For a student who enrols for such speciality courses, an ability to assimilate

> and acquired special knowledge is required. Not everyone has this ability. Of course intelligence and abilities do not know any frontiers of caste or class or race or sex. They can be found anywhere, but not in everyone. Therefore, selection of the right calibre of students is essential in public interest at the level of specialised post-graduate education. In view of this supervening public interest which has to be balanced against the social equity of providing some opportunities to the backward who are not able to qualify on the basis of marks obtained by them for post-graudate learning, it is for an expert body such as the Medical Council of India, to lay down the extent of reservations, if any, and the lowring of qualifying marks, if any, consistent with the broader public interest in having the most competent people for specialised training, and the competing public interest in securing social justice and equality. The decision may perhaps, depend upon the expert body's assessment of the potential of the reserved category candidates at a certain level of minimum qualifying marks and whether those who secure admission on the basis of such marks to post-graudate courses, can be expected to be trained in two or three years to come up to the standards expected of those with post-graudate qualifications."

A perusal of the judgment, referred to above, clearly indicates that to reserve seats at the post-graduate level, in medical courses, it was left to the expert bodies to take a decision in that regard. After Preeti

Srivastava's case (supra), the Medical Council of India, in the year 2000, had framed Postgraudate Medical Education Regulations, 2000. Clause 9 of the Regulations reads thus:

> "SELECTION OF POSTGRADUATE STUDENTS
>
> (1)Students for postgraduate medical courses shall be selected strictly on the basis of their academic merit.
>
> (2)For determining the academic merit, the university/institution may adopt any one of the following procedures both for degree and diploma courses.
>
> (i)On the basis of merit as determined by a competitive test conducted by the State government or by the competent authority appointed by the state government or by the university/group of universities in the same state; or
>
> (ii)On the basis of merit as determined by a centralised competitive test held at the national level; or
>
> (iii) On the basis of the individual cumulative performance at the first, second and third MBBS examinations, if such examinations have been passed from the same university; or
>
> (iv)Combination of (i) and (iii);
>
> Provided that wherever entrance test for postgraduate admission is held by a State government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical course shall be 50 percent for general category candidates and 40 percent for the candidates belonging to Scheduled Castes,

Scheduled Tribes and Other Backward Classes:

> Provided further that in non-governmental institutions fifty percent of the total seats shall be filled by the competent authority and the remaining fifty percent by the management of the institution on the basis of merit."

Similarly, Commission for Scheduled Caste and Scheduled Tribes in its Fifth report regarding reservation of seats for Scheduled caste has observed thus:

> "With reference to your letter No. AC-V/7/86/6965, dated 31.5.1986, on the subject noted above, I am to state that the Medical Council of India has not prescribed any percentage of reservation of seats for postgraduate medical course to any category since the Council is not in favour of reservations of seats to any category at postgraduate level. The students for postgraduate training should be selected strictly on merit judgedc on the basis of academic record in the undergraudate course. The Council recommendations should be strictly followed in all respect."

In view of decision of the Medical Council of India and opinion, expressed by the Commission for Scheduled castes and Scheduled tribes, this Court is of the opinion that decision of the State Government in not providing reservation to full up the Courses is perfectly justified. In their reply, respondents No. 1 and 2 have categorically stated that the

reservation, in the courses in question did not find favour with the authorities because of the following reasons:

> "5. That the reservation in PG courses for SC/ST candidates has not been favoured in view of the following:
>
> (i) The students belonging to reserved categories get intensive prolonged training for a period of 5 years and 6 months at the MBBS level and they may rightly be supposed to attain during this period maturity and merit sufficient to bring them at par with other students. At the PG level, therefore, they are able to compete without any handicap.
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> (ii) Any reservation at the PG level is likely to lead to a fall in standards of postgraudate Medical education and training.
>
> (iii) The PG medical education is not meant for everybody to whatever section of the population he or she may belong; especially adequate reservation is already provided for candidate of such categories for the MBBS courses after conclusion of which the Medical College turns out 'basic' doctors to serve the community. PG education is actually meant for highly deserving and proficient students who are to take up the added responsibilities of specialized teaching research and medical care."

We are of the opinion that by taking note of the judgment of the Hon'ble Supreme Court and observations made by Medical Council of India, a conscious decision has been taken by the authorities in not providing reservation, in the Courses, in the policy statement issued on

April 2, 2002. Document Annexure R-3 is only reiteration of the earlier decisions, taken in the year 1988 (Annexure R-1) and 1991 (Annexure R-2), by the authorities, wherein it is so provided. A perusal of the documents Annexure R-1 to R-3 clearly demonstrates that for the last two decades, the authorities have not favoured reservation of seats at the Postgraduate level in medical courses.

Contention of counsel for the petitioners that in view of notification Annexure P-6, it was incumbent upon the authorities to reserve seats for members of the Scheduled caste in the Courses, is liable to be rejected. Constant practice in not providing reservation at post-graduate level in medical courses, which is reflected in documents Annexure R-1 to R-3 clearly shows that the notification Annexure P-6 pertains only to the admission at the graduate level. This opinion is strengthened when we read contents of prospectus Annexure P9, which was issued to fill up the seats at graduate level, i.e., MBBS etc. A bare fact that after issuance of notification Annexure P-6 on March 19, 1999, no reservation was provided, in subsequent years, at postgraduate level in medical courses clearly establishes the stand taken by the Government that Annexure P6 was meant only for filling up the seats, at graduation level and it was not meant for postgraduate medical courses. It is also an admitted fact that the petitioners have not laid any challenge to the document Annexure R-3. Unless that document is set aside, no benefit can be given to the petitioners with regard to reservation of seats in the Courses. At the postgraduate level, in medical courses, it is expected that best talent would be admitted, so that they may help in progress of the nation. As per admitted position, to give benefit to the down-troddens, sufficient provisions exist, by making reservation of

seats in the All India quota, in postgraduate courses.

As per facts, mentioned in the written-statement and not controverted at the time of arguments by counsel for the petitioners, for this year, 50% of the total seats in the Courses are reserved for All India quota and out of those seats, 22.5% seats are reserved for Scheduled castes and Scheduled tribe candidates. On account of that, this Court is of the opinion that necessary attempt has been made to help members of the Scheduled castes also.

In view of facts, mentioned above, this writ petition fails and the same is hereby dismissed.

(Jasbir Singh)
Judge

(Nirmal Yadav)
Judge

May 01, 2007.
DKC